

PUBLIC RECORDS RETENTION

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**Internal Audit Division
Finance Department
City of Cincinnati**

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*Interdepartmental
Correspondence Sheet*

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City of Cincinnati



To: Members of the Operational Audit Committee
David E. Rager, City Manager

From: Mark Ashworth, Internal Audit Manager

Copies to: William Moller, Finance Director

Subject: **Public Records Retention Audit**

The Internal Audit Division has completed its audit of Public Records Retention policy for City departments. This audit was performed in accordance with the annual audit plan approved by the Operational Audit Committee.

The Chairman of the City's Records Commission has reviewed the findings contained in the audit and concurs with the final conclusions. We urge that all of our recommendations be implemented. We thank the management and department records custodians for their cooperation and assistance during this audit.

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I. Executive Summary

Records produced by public offices in the course of business are property of the public. Public offices have the responsibility for retention and management of that public property. Ohio Revised Code §149 and Cincinnati Municipal Code Chapter 206 regulates the maintenance and disposal of public records in the City of Cincinnati. These laws require that public offices are able to provide citizens with “prompt inspection” of public records. Compliance with public records law has received greater attention in recent years and the Ohio State Legislature is considering legislation to further strengthen the law.

The audit was designed to determine whether City departments and divisions are complying with the law on public record retention and destruction. It also examined whether departments process public record requests in a legal manner. The City of Cincinnati is generally responsive toward record requests made by the citizens and news media.

The audit found significant weaknesses in departments’ record retention efforts. Some departments lacked retention schedules or were not aware of retention schedules for some of their divisions. Some departments appointed a records custodian only after the audit was initiated. Few departments were filing the appropriate forms when disposing of records. Many departments keep records longer than required according to their retention schedule. The audit did not find any cases where records were purged prematurely.

The audit also found a general lack of understanding about employees’ responsibilities regarding public records. Institutional knowledge has suffered as new employees take over responsibility for record management without training. Some departments incorrectly require public record requests to be made in writing. Very few employees were aware of the City’s e-mail retention policy including members at the Regional Computer Center (RCC).

The audit makes ten recommendations to improve record retention in the City. The first four recommendations propose training for employees in public record law and how to handle public record requests. E-mail retention training should also be incorporated into record training for employees who use e-mail. Each department should have a record custodian and assistant record custodian who receive more comprehensive training in records management.

The last six recommendations are ways the administration can improve record retention practices throughout the City. Departments should be required to maintain approved and updated retention schedules. These schedules should be available on the City web page. The chairperson of the City Records Commission should be given the authority to enforce departments compliance with these rules. Departments are encouraged to store documents in eye-readable format or receive approval from the Ohio Historical Society if they do not. The audit concludes with consideration of the creation of a common record center. This idea was first proposed by a records consultant in 1981 and the City continues to struggle with the challenges it faced then. The audit advocates a study that would weigh the cost as well as the value that would be created by such a center.

II. Introduction

Background

Records created by government are public assets and a primary responsibility of the government is the stewardship of these assets. Good record retention and management are essential requirements of an open government, allowing the public to understand the workings of government. Ohio law requires public offices to provide “prompt inspection” of public records and copies of requested records in a “reasonable period of time.” Complying with the law and fostering transparent government require a well-managed record system stored in a retrievable manner.

Ohio Revised Code (ORC) §149.31–148.44 regulates the maintenance of local government public records and provides guidelines on purging those records. Chapter 206 of the Cincinnati Municipal Code (CMC) serves a similar function and established the City Records Commission. The duties of the commission are to provide rules for the retention and disposal of City records and to review record disposal lists submitted by City departments, boards, and commissions. Section 206-7 provides a definition of a public record as “any document, device or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any department, board or commission of the city which serves to document the organization, functions, policies, decisions, procedures, operations or other activities of the city or of its departments, boards or commissions.” Chapter 206 also defines a record disposal list and states that creation of these lists and destruction of records should follow the process outlined in ORC §149.

Open access to public records remains a significant priority at the state level and continues to attract media attention. The Ohio Coalition on Open Government conducted a public records audit through Ohio in April 2004 and found only about half of the offices in compliance with public record law. The Ohio General Assembly is currently considering legislation to further strengthen Ohio’s public record laws and increase penalties for non-compliance. Among its many provisions, this bill would:

- Expand the definition of “public record,”
- Require training for all public officials and employees regarding the open records law, and
- Establish progressive fines including legal fees for non-compliance.

Current public records law, provisions of the anticipated new law, and the spirit of an open and transparent government make it critical that the City of Cincinnati have a comprehensive program designed at identifying, organizing, and maintaining public records.

Audit Scope and Methodology

This audit’s objective was to determine whether City departments and divisions are complying with CMC Chapter 206 and ORC §149 concerning public record retention and destruction. The Internal Audit Division (IAD) also asked City departments and divisions to describe their method for receiving public record requests so that IAD could verify that the process conformed to the law.

Audit methodology consisted of three main components:

- Background research about records retention and public record requests,
- Interviews with the records retention custodian for each department/division, and
- Review of departments' forms:
 - o RC-1 (Application for a One-Time Disposal),
 - o RC-2 (Approved Records Retention Schedule), and
 - o RC-3 (Certificate of Records Disposal) for the years 2003 and 2004.

The audit was designed to obtain an understanding of the City's compliance with the records retention law and the public records request process and to identify opportunities for improvement. Internal Audit did not attempt to verify that the records listed on the RC-3 forms were actually purged from the entity.

This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS).

III. Findings and Recommendations

The City of Cincinnati has a decentralized records system. Each department is responsible for developing or modifying its record retention schedule, maintaining its own records, and responding to public record requests. IAD identified significant weaknesses in departments' record retention efforts. IAD found:

- Some departments and divisions lack retention schedules or were not aware of the retention schedules for divisions merged into their department;
- Some departments and divisions assigned a person as records custodian only when called by IAD to review the retention schedule;
- Very few departments understood that they were required to file a RC-3 before purging records;
- Many departments have kept records longer than necessary according to their approved RC-2;
- No department had prematurely purged records per the City's *Records Retention Schedule Manual*;
- There is very little knowledge of the e-mail retention policy citywide. During interviews, even RCC was unsure if the Ohio Historical Society had approved the policy.

Records management has suffered as knowledgeable employees retire and other employees are not trained. IAD could not find specific Citywide guidelines for training record retention officers in departments or divisions.

There was little evidence of control activities for public records. Few departments self-audited this function and in many departments the record retention officer was not aware of the position duties. In some cases, staff was not aware that they were the department's record retention officers. There was little evidence that monitoring takes place at the department level.

Recent staff reductions have also hurt record retention efforts. Some departments cut back on administrative tasks such as proper record retention efforts to focus their energies on service delivery. IAD acknowledges the tight budgets for City agencies but

emphasizes that the proper maintenance of public records should be considered a critical department function.

This audit makes ten recommendations to improve public record retention in the City. The first four recommendations concern training needed to make City employees aware of their responsibilities under Ohio public records law. The other six recommendations are ways the City administration can improve practices within departments and strengthen the role of the City Record Custodian. The audit concludes with the need to study the creation of a public record center as a long-term solution to record management.

A. Training Recommendations

Most departments and divisions lack a complete understanding of the record retention procedure. The audit found many problems with departments' processes. Some entities were following the Schedule of Records Retention and Disposition (RC-2) but were not using the Certificate of Records Disposal (RC-3) before performing their yearly document purge. Some departments and divisions incorrectly believed that the *Records Retention Scheduling Manual* was their department's records retention schedule and purged records according to that schedule. Many departments are maintaining records longer than their approved retention schedule. Other departments were uncomfortable purging anything because their retention schedules were outdated; they are now in the process of updating their record retention schedule. IAD found that in many cases the custodianship of the entity's records had changed to another employee without formal training in the record retention and purging procedure. These issues have contributed to a lack of consistency in the records retention and disposition process.

IAD also asked entities how they handled public record requests. Although the Law Department presented an overview on this topic to department directors at their weekly staff meeting, IAD found that some departments require public record requests to be in written form. IAD was told that this was done to assure that the proper documents are retrieved. Current Ohio Public Records law allows a public office to ask for a request in writing but does not permit the office to require that the request be made in writing.

Changes to the public records law currently being considered by the Ohio General Assembly would require mandatory training of public officials and public employees in Open Records Law. As we performed our fieldwork for the audit, the Law Department was nearing completion of public records training program for city departments. A definitive date for training has not been established.

Recommendation 1. The City should begin a mandatory training program on record retention and disposition. The City Manager should order all department and division directors to attend training on public record requests. The City Manager should require mandatory training by Human Resources for all new hires and new managers. This training should include:

- The definition of a public record;
- How to handle a public record request correctly; and
- The employee's responsibility for the care and stewardship of public records with an explanation of RC-1, RC-2, and RC-3 forms.

Recommendation 2. Each department should identify a records custodian and assistant records custodian to attend more extensive training in records management. Each entity should insure that the institutional knowledge does not leave the entity if a retirement or transfer takes place.

E-mail is also a form of public record. The City of Cincinnati has an e-mail retention policy that was submitted to the State of Ohio Historical Society and the Ohio State Auditor's Office in October 1999. They approved the policy in November 1999. IAD could not find evidence that this policy was amended, modified, or rescinded. Therefore, IAD concluded that this policy is in effect and should be taught to all employees.

IAD found that almost all departments were unaware of the content of the e-mail retention policy. Many did not know that the City has an e-mail retention policy. The policy was virtually unknown by all record retention officers interviewed and the policy is not on the City's Policy and Procedures website. IAD asked the Human Resources training coordinator if new employees or new managers receive training on the e-mail retention policy. Human Resources staff said that training includes information on the proper use of e-mail but not on e-mail retention. The Human Resources training managers were also unaware of the e-mail retention policy.

The State of Ohio and the Ohio State Historical Society provide training in public record requests and e-mail retention. Human Resources coordinates and arranges citywide training; therefore, IAD believes that the Human Resources training coordinator and assistant training coordinator should attend this training along with two representatives from each City department.

Recommendation 3. The City administration should require e-mail retention training for all City employees who use e-mail. The e-mail retention policy should become part of the new hire orientation as well as training for new managers.

Recommendation 4. The City's Records Retention chairperson, Law Department, and Human Resources Department should work with state officials to arrange a comprehensive training program on record retention, public record request procedure, and e-mail retention for City employees and elected officials.

B. Recommendations for the City Administration

In performing this review, IAD found that some departments did not know where their retention schedules were located. It was clear that some departments had not used their schedules for some time. Pending legislation would require government entities to have records retention schedules available for inspection by the public or face stiff fines and penalties.

Recommendation 5. The administration should require each department to maintain a record retention schedule approved by the City's Records Commission. This schedule should be submitted to the Records Commission with a copy of the approved RC-2. The RC-2 should be updated when necessary and submitted annually when the department submits its RC-3 form.

Recommendation 6. The Records Commission should periodically provide the Regional Computer Center with a current citywide list of record retention schedules for the City web page.

In interviewing the chairperson of the City's Records Commission, IAD learned that the position has no authority to enforce compliance with the City's public record rules. Authority and responsibility are not aligned correctly for this position. Commission records show an inconsistent pattern of department compliance but the chairperson lacks the authority to force entities to comply with the ORC and CMC rules on record retention.

Recommendation 7. The City Administration should give the chairperson of the Records Commission the authority to require every City Department and all entities whom are subject to public records retention regulations, as a result of their business with the city, to submit updated RC-2s.

Recommendation 8. The City Administration should require entities to submit an RC-3 each year on a specific date determined by the City's Records Commission.

Records are increasingly created and stored electronically. In some cases, these records are to be retained forever. The State Archives of Ohio's *Statement of Maintaining Digitally Imaged Records Permanently* states that permanent records must be kept in eye-readable form. Eye-readable records are records that do not require the use of hardware and software to decode the information stored on them. Examples of eye-readable records include paper and microfilm. Entities may use digital records for operations and store them in a digital medium as long as there is also a permanent copy of the record in eye-readable form. There are also various requirements for microfilm and negatives storage but IAD did not review this aspect of record maintenance.

Recommendation 9. When City departments review their RC-2 forms, they should show the method of retaining records if that method is not eye-readable. The Ohio Historical Society will review the method used in the application and approve or deny the request.

The City hired a record consultant in 1981 to review public record retention and management. Among the problems identified by the consultant were inadequate record storage, confusion over retention requirements, and problems with the City's microform program. The same concerns that were identified in the early 1980's still exist today. At that time, the consultant recommended that the City hire a record manager to establish a record center and improve the microform program. IAD believes that the recommendation still has merit today.

Courts are showing less patience with public offices that do not fully and promptly disclose records when requests are made. Judges have begun to order public entities to pay plaintiff's legal fees when the public entity does not respond to a record request in a reasonable manner. A considerable liability is created for the City if its records are not properly stored, indexed, and promptly available to the public upon request.

City departments also believe they devote considerable resources to managing records and answering public record requests and the cost of these activities should be determined. In addition to these measurable costs, the City should consider the qualitative improvements that would be derived from centralized records, such as greater transparency and improved ability to comply with records requests. Entities vary greatly on the method that they use to store and retrieve records. A central location with a librarian or records manager would reduce confusion and consistently provide correct and timely information to the public. This would also demonstrate a more proactive stewardship of public records.

Recommendation 10. The City administration should have an efficiency and effectiveness study performed to determine if the creation of a centralized record center with a professional manager is warranted. This study should evaluate both quantitative and qualitative measures when considering the City's ability to comply with public record law.